

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireline Broadband)	WC Docket No. 17-84
Deployment by Removing Barriers)	
To Infrastructure Investment)	

To: The Commission

**REPLY COMMENTS
OF THE
COALITION OF CONCERNED UTILITIES**

**Arizona Public Service Company
Eversource Energy
Eversource Energy
Exelon Corporation
FirstEnergy
Hawaiian Electric Companies
Minnesota Power
NorthWestern Energy
Puget Sound Energy**

**Thomas B. Magee
Timothy A. Doughty
Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
(202) 434-4100**

**Attorneys for
*Coalition of Concerned Utilities***

Filed: November 20, 2019

SUMMARY OF ARGUMENT

The wireless entities supporting CTIA's Petition fail to establish: (1) that regulating attachments to streetlight-only poles is at all appropriate; (2) that utility standards required to safely and efficiently operate electric systems should irresponsibly be rejected for their convenience; or (3) that it would serve any useful purpose, and not be detrimental, to require that pole attachment agreements never deviate from Commission rules.

The Commission already has distinguished electric distribution poles from streetlight-only poles, determining unambiguously that distribution poles, and not streetlight-only poles, are suitable for wireless communications attachments. Further, because streetlight-only poles supply light and not power, they are not part of the electric distribution system, and the Eleventh Circuit's *Southern* decision accordingly specifies they are not subject to Commission regulation.

Utility standards are developed over time based on complex and interrelated safety and reliability factors and based on decades of experience, innovation, trial and error, and diligent observation. Clear and safer fall space on the pole, climbing space vs. bucket truck use, topography, density of urban areas, weather, vegetation issues, government aesthetic/historic requirements, monitoring and policing installations, efficiency of pole replacements, and many other factors go into each utility's determination of what, if anything, to allow in its "unusable" pole space.

Careless requests by Crown Castle and others to relax utility construction and design standards and to experiment downward is like asking the National Highway Traffic Safety Administration to order bumpers, airbags, head restraints and other safety gear to be removed to see whether cars can be built for less money without an increase in injuries.

Neither AT&T nor Verizon supported CTIA's proposal that pole attachment agreements never deviate from FCC rules, and no other commenter provided any convincing reason to require it. This ill-considered proposal would do nothing to reduce the number of disputes, while contract negotiations already can and do achieve a mutual understanding that is acceptable to both sides. It makes no sense to take that away.

The *Coalition* therefore respectfully requests that CTIA's Petition be denied.

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Arizona Public Service Company, Evergy, Eversource Energy, Exelon Corporation, FirstEnergy, the Hawaiian Electric Companies, Minnesota Power, NorthWestern Energy, and Puget Sound Energy (collectively, “the *Coalition of Concerned Utilities*” or “*Coalition*”), by their attorneys, respectfully reply to comments filed in response to CTIA’s Petition for Declaratory Ruling (“CTIA’s Petition”) in the above-captioned proceeding.¹

As explained below, the wireless entities supporting CTIA’s Petition fail to establish: (1) that regulating attachments to streetlight-only poles is at all appropriate; (2) that utility standards required to safely and efficiently operate electric systems should irresponsibly be rejected for their convenience; or (3) that it would serve any useful purpose, and not be detrimental, to require that pole attachment agreements never deviate from Commission rules. The *Coalition* therefore respectfully requests that CTIA’s Petition be denied.

¹ *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Petition for Declaratory Ruling, WT Docket No. 17-79, WC Docket No. 17-84 (Sept. 6, 2019) (“CTIA’s Petition”).

I. REPLY COMMENTS

A. The Commission Cannot and Should Not Regulate Attachments to Streetlight-Only Poles

1. The Pole Attachment Act does not cover streetlight-only poles

Several wireless companies supporting CTIA’s Petition claim the Pole Attachment Act must apply to streetlight-only poles because the Act’s reference to “any” pole must include “streetlight-only poles.”² This contention ignores the Eleventh Circuit’s *Southern* decision specifying that the “poles” covered by the Act must be part of an electric distribution system: “The text of the statute, coupled with the presence of this reverse-pre-emption clause, make it plain that the Act’s coverage was intended to be limited to the utilities’ local distribution facilities.”³ Streetlight-only poles are not part of local distribution facilities, which the court defined as “substations, underground cables, poles, overhead conductors, transformers, service drops, and meters that supply power to the customers.”⁴ Because streetlight-only poles supply only light, and not power, they are not part of the distribution system and not subject to Commission regulation.

AT&T claims that since the *Southern* decision ruled that transmission facilities are towers and plant, and not “poles,” and since streetlight-only poles are “poles,” they must be covered by the Pole Attachment Act.⁵ In *Southern*, however, the Eleventh Circuit ruled that the Act’s reference to “poles, ducts, conduits and rights-of-way” must be read together, and when read

² See Comments of AT&T at 23 (Filed Oct. 29, 2019) (hereinafter “AT&T Comments”); see also Comments of Verizon at 3 (Filed Oct. 29, 2019); see also Comments of Crown Castle International Corp. at 40 (Filed Oct. 29, 2019) (hereinafter “Crown Castle Comments”); see also Comments of ExteNet Systems, Inc. at 6 (Filed Oct. 29, 2019) (hereinafter “ExteNet Comments”); see also Comments of T-Mobile USA, Inc. at 23 (Filed Oct. 29, 2019); see also Comments of ACA Connects – America’s Communications Association at 2-4 (Filed Oct. 29, 2019).

³ *Southern Co. v. FCC*, 293 F.3d 1338, 1345 (11th Cir. 2002).

⁴ *Id.* at 1344.

⁵ See AT&T Comments at 25.

together means “local distribution facilities.”⁶ As explained above, streetlight-only poles are not part of local distribution facilities.

Crown Castle recognizes that streetlight-only poles are not placed in the same Uniform System of Accounts account used by FERC to classify distribution poles. Nevertheless, in an effort to claim streetlight-only poles actually are part of an electric distribution system, Crown Castle notes that streetlight-only poles are placed in “distribution facilities” accounts rather than “transmission facilities” accounts.⁷ But simply because the Uniform System of Accounts places streetlight-only poles in the broad category of “distribution facilities” does not make them part of the electric distribution system covered by the Act. As explained above, the Eleventh Circuit specified the Act covers only “local distribution facilities,” and specifically defined that term to include only facilities that supply power to customers. Streetlight-only poles do no such thing.

2. The Commission recognizes the distinction between distribution poles and streetlight-only poles

AT&T claims the Commission has expressly held that the analogous state and local obligations to allow access to their property in the right-of-way under Sections 253 and 332 of the Communications Act cover “light poles,” and that similarly, the Commission’s Broadband Deployment Advisory Committee (“BDAC”) has included poles used for “lighting” as poles to be provided access in the BDAC model codes for states and for municipalities.⁸

Sections 253 and 332 of the Act, however, are not analogous to Section 224 (the Pole Attachment Act), and BDAC’s model codes are designed to comply with Sections 253 and 332, not the Pole Attachment Act. The Pole Attachment Act specifically excludes poles owned by

⁶ See *Southern Co.*, 293 F.3d at 1345.

⁷ Crown Castle Comments at 41.

⁸ AT&T Comments at 24.

state and local governments (along with poles owned by cooperatives), and is designed to provide nondiscriminatory access to these non-government (and non-cooperative) poles.⁹ Sections 253 and 332, on the other hand, apply directly to state and local governments, and are designed for another purpose, to prohibit state and local government legal requirements that prohibit telecommunications.¹⁰

Contrary to AT&T's claim and undercutting the basis of CTIA's Petition, the Commission already has specifically distinguished electric distribution poles from streetlight-only poles, and determined that only the former are suitable for wireless communications attachments. In its historic preservation proceeding, the Commission determined that attaching distributed antenna systems ("DAS") and small cell facilities is inconsistent with "light poles, lamp posts, and other structures whose primary purpose is to provide public lighting."¹¹ By comparison, the Commission determined that distribution poles and transmission towers, which do not include streetlight-only poles, "are, by their nature, designed to hold a variety of electrical, communications or other equipment," that "[t]heir inherent characteristics thus incorporates the support of attachments," and that "[t]he addition of DAS or small cell facilities to these structures is therefore fully consistent with their existing use."¹² In short, streetlight-only poles were excluded because they are not "by their nature" designed to hold such equipment

⁹ See 47 U.S.C. §§224(a)(1) and (f)(1).

¹⁰ See 47 U.S.C. §§253(a) and 332(c)(7).

¹¹ *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies; Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting; 2012 Biennial Review of Telecommunications Regulations*, Report and Order, WT Docket Nos. 13–238, 13–32; WC Docket No. 11–59, 29 FCC Rcd 12865, 12907, ¶91 (2014). The Commission defined "utility structures" as "utility poles or electric transmission towers ... but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting." *Id.*

¹² *Id.* at ¶33.

and the attachment of DAS and small cell facilities to streetlight-only poles is not “consistent with their existing use.”

Finally, AT&T loosely references “light poles” and poles used for “lighting.”¹³ But such poles are often not “streetlight-only poles.” Instead, many “light poles” and poles used for “lighting” are also electric distribution poles already subject to the Pole Attachment Act which happen to have lighting facilities attached. Streetlight-only poles by definition are not electric distribution poles and so are not subject to the Act.

3. Attachments to streetlight-only poles are far more complicated, expensive and time-consuming than attachments to distribution poles

Crown Castle misleadingly remarks that attaching small wireless facilities to wooden poles with streetlights can be made in the same manner as attaching small wireless facilities to other wooden distribution poles.¹⁴

This comment is misleading because it suggests that attaching to all streetlight-only poles is easy. Unmentioned by Crown Castle is that wooden streetlight-only poles are only a small fraction of streetlight-only poles, and that attaching to the vast majority of non-wooden streetlight-only poles is far more complicated, time consuming and expensive than attaching to wooden poles. As explained by the *Coalition*,¹⁵ streetlight-only poles are not load rated for any additional attachments other than lighting, and are neither designed nor installed to provide access for fiber, to mount equipment, to conceal equipment, to disconnect power, or to provide necessary National Electrical Safety Code (“NESC”) clearances, all of which wireless attachments require. Most municipalities have distinctive street lighting standards, which might

¹³ AT&T Comments at 25.

¹⁴ Crown Castle Comments at 39.

¹⁵ Comments of the *Coalition of Concerned Utilities* at 12-16 (Filed Oct. 29, 2019) (hereinafter “*Coalition Comments*”).

include specifications regarding pole color, material, size, design, and other factors. Because in many cases the service must be run underground, considerable construction activity is required to install the electricity supply equipment. This construction is in addition to the considerable construction required already just to replace the pole. Sidewalks, streets, parking lots and rights-of-way must often be torn up, removed and replaced in order to install new electric service to the pole. And accomplishing this type of major infrastructure addition requires significant amounts of time, money and cooperation between antenna owners, municipal leaders, property owners and utility engineers.

B. Wireless Attachers Cannot Run Roughshod Over Utility Standards for the “Unusable” Space

1. “One-size-fits-all” utility standards do not exist for good reason

AT&T claims the Commission has already determined that attachments in the unusable space can be safe and feasible, suggesting that any utility which restricts such access is being unreasonable.¹⁶

AT&T misreads the Commission’s findings and quotes them out of context. The *2018 OTMR Order* cited by AT&T did not analyze any utility standards applicable to the unusable space to determine whether they might be appropriate, but instead rejected communications company requests to limit those standards: “We agree with those utility commenters who argue that one-size-fits-all national pole construction standards (even if they were based on the NESC or similar codes) are not a good idea, and the better policy is to defer to reasonable and targeted construction standards established by states, localities, and the utilities themselves where

¹⁶ AT&T Comments at 27.

appropriate.”¹⁷ The Commission also declined to prohibit utilities from banning unusable space attachments entirely: “[W]e do not today prohibit utilities from adopting blanket bans on the attachment of equipment in the unusable space on a pole.”¹⁸ Instead of making any determination, the Commission explained that the record was insufficient to make a determination.¹⁹ And as explained by the *Coalition* and other utilities in this proceeding, the record continues not to support such a ruling.

Crown Castle claims that nearly two-thirds of the utilities allowing Crown Castle to attach permit “some” equipment to be installed in the unusable space of a pole, and that this “undermines” any blanket safety or climbing concerns of utilities for attachments in the unusable space.²⁰ Crown’s argument, however, suggests that over one-third of utilities prohibit such attachments entirely, and that many utilities limit the number and type of attachments that can be installed in the unusable space.

The fact that utility standards can and do vary widely is not surprising. As explained by the *Coalition*, FirstEnergy required fall arrest devices for decades before OSHA mandated their use in a safety regulation.²¹ Like other standards, this utility requirement was developed over time based on complex and interrelated safety and reliability factors and based on decades of experience, innovation, trial and error, and diligent observation. Clear and safer fall space on the pole, climbing space vs. bucket truck use,²² topography, density of urban areas, weather,

¹⁷ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7772 at ¶133 (2018).

¹⁸ *Id.* at ¶133, n.498.

¹⁹ *Id.* at ¶134.

²⁰ Crown Castle Comments at 43.

²¹ *See Coalition* Comments at Att. 2, ¶ 5.

²² There are many reasons why some poles are not accessible using a bucket truck and thus must be climbable. For example, poles are sometimes not set near level ground and the grade might be greater than what the bucket trucks and outriggers are designed for. In such cases, lineman must be able to climb the poles. *See also* Comments of the

vegetation issues, government aesthetic/historic requirements, the ability to monitor and police installations, efficiency of pole replacements, and many other factors go into each utility's determination of whether and what to allow in its unusable space.

Careless requests by Crown Castle and others to relax such standards and to experiment downward is like asking the National Highway Traffic Safety Administration to order bumpers, airbags, head restraints and other safety gear to be removed to see whether cars can be built for less money without an increase in injuries.

Crown Castle claims to be “perplexed” by utilities which prohibit the placement of their own meters in the unusable space on the poles, requiring them to be installed in the right-of-way.²³ But such self-imposed restrictions are not perplexing at all. As the *Coalition's* Comments explained, many utilities for good reason seek to limit the number of facilities installed in the unusable space on the pole. Meters are one of those facilities. As a result, a utility work practice might strive to eliminate meters on poles and so for new attachments, a utility might require the service to be unmetered or that any meter be placed in the right of way on a pedestal.

ExteNet claims that if a utility allows other telecommunications carriers and cable providers to place any equipment on a portion of the pole, a blanket prohibition denying the placement of small wireless facilities in that space is *de facto* discrimination, prohibited by Section 224 and by Section 1.1403 of the Commission's rules.²⁴ As explained by the *Coalition*, however, there may be several reasons why such attachments existed.²⁵ New standards may be

Electric Utilities in Opposition to CTIA's Petition for Declaratory Ruling on Pole Attachment Issues at 16-17 (Filed Oct. 29, 2019).

²³ Crown Castle Comments at 43.

²⁴ ExteNet Comments at 8.

²⁵ *Coalition* Comments at 26.

adopted which cover only new attachments, leaving older attachments in place. Utilities that are acquired by other utilities might have had different attachment practices that cannot be changed overnight. In addition, the ancillary equipment proposed to be installed by wireless carriers is significantly greater in size and number and far more prevalent than earlier installations by other communications companies, and they are required for every “node” pole with wireless antennas. Wireless company proposals to attach such equipment is therefore distinguishable from earlier proposals to accommodate less intrusive and less numerous equipment.

In any event, FCC regulations allow utilities to modify their standards going forward as circumstances require: “A utility may, however, choose to reduce or eliminate altogether the use of a particular method of attachment used on its poles, including boxing or bracketing, which would alter the range of circumstances in which it is obligated to allow future attachers to use the same techniques.”²⁶

ExteNet claims that a “large investor-owned utility with operations in Maryland, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia” has imposed a blanket ban on attachment of any wireless equipment to its poles save for the antenna.²⁷ This is a false claim. The only utility that fits ExteNet’s description is FirstEnergy, and as the Declaration of FirstEnergy’s Randy Coleman explained, FirstEnergy does not have a “blanket ban,” but instead has a size limit based on reasonable justification.²⁸ Moreover, it must be noted that uniformly applied construction standards are both necessary and lawful, not unlawful “blanket bans.” In

²⁶ *In re Implementation of Section 224 of the Act: A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5340 at ¶227 (April 7, 2011).

²⁷ ExteNet Comments at 16, n. 50.

²⁸ See *Coalition Comments* at Att. 2, ¶ 9.

fact, if construction standards were not uniformly applied, they would be discriminatory in violation of the Pole Attachment Act and the Commission's rules.

2. Utility standards cannot be compromised for expediency

Crown Castle contends that attaching its radios, meters and shut-off switches in the unusable space is "essential" because local jurisdictions are "loath" to approve new poles, pedestals or ground-mounted shrouds in the right-of-way.²⁹ But just because it may take more time or be more difficult to install facilities in the right-of-way does not mean that Crown Castle cannot install facilities in the right-of-way at all, and certainly does not justify allowing communications attachers to run roughshod over utility standards.

3. Utility standards regarding radiofrequency emissions are necessary to protect linemen and to operate the electric distribution system

Crown Castle cavalierly asserts that utilities should have no standards at all which pertain to radiofrequency emissions that the FCC has not specifically adopted.³⁰ To begin with, this request is not part of CTIA's Petition and should not be entertained. Further, the FCC historically has not envisioned the installation of commercial wireless radiofrequency devices on electric pole distribution systems and this proceeding is not designed to address them. Wireless attachers must accept utility pole distribution systems as they are. Utility poles are accessed regularly by electric linemen and others, and electric utilities have installed internal wireless communications systems necessary to operate or restore the electric distribution system that cannot be compromised. To request that utilities be prohibited from adopting standards to

²⁹ Crown Castle Comments at 42-43.

³⁰ See Crown Castle Comments at 44.

protect linemen from radiofrequency exposure and to protect critical communications systems from interference is simply irresponsible.³¹

C. CTIA’s Proposal That Contracts Never Vary From FCC Regulations is Ill-considered

Neither AT&T nor Verizon provided comments to support CTIA’s proposal that pole attachment agreements never deviate from FCC rules, and no other commenter provided any convincing reason to require it.

Crown Castle correctly notes that filing an FCC complaint is expensive and time-consuming.³² But Crown Castle did not explain how some requirement that attachment agreements never deviate from FCC rules would result in fewer complaints being filed. The reason complaints are filed is because parties cannot agree on what the Commission rules require, and it takes a complaint proceeding to resolve their differences.³³ More productively, contract negotiations between the parties can achieve a mutual understanding that is acceptable to both sides. It makes no sense to take that away.

Crown Castle asks the Commission to “clarify” that utilities may not include rates, terms, and/or conditions that unreasonably deviate from the FCC’s (or other applicable regulatory authority’s) rules in attachment agreements by representing that the rates, terms, and/or conditions are the result of collaborative, bargained-for exchanges between the parties.³⁴ This

³¹ It is also incongruous with the FCC’s other proceedings, in which CTIA itself has noted that electric service reliability is essential for communications service reliability: “The resiliency of mobile wireless networks, like almost all other communications services, depends upon continuous access to electricity. In recent years, power companies have made investments to address issues related to the resilience of their services. However, challenges still exist for power companies, as well.” Comments of CTIA, PS Docket No. 11-60, at 6 (Filed Feb. 8, 2019).

³² Crown Castle Comments at 46.

³³ One relevant analogy is a highly prescriptive state service tariff. The amount of detail in the tariff does not eliminate complaint proceedings at the state public service commission because guidance is still needed to interpret the tariff.

³⁴ Crown Castle Comments at 49.

proposal, however, begs the question what an “unreasonable deviation” is, which only an FCC complaint can resolve. Further, Crown’s proposal would have the irrational and unproductive effect of eliminating any “collaborative, bargained-for exchanges.” Finally, it makes no practical sense to prohibit parties from agreeing to processes and procedures above or beyond what might specifically be required by existing regulations. Such a prohibition would eliminate commonplace operating routines which are relied upon by the parties to ensure work is done in a mutually agreeable and efficient manner.

D. This Proceeding Should Be Limited to Issues Raised in CTIA’s Petition

ExteNet raises a new issue not addressed by CTIA’s Petition by asking the Commission to declare that Commission-regulated pole attachment rates apply to replacement poles. ExteNet claims this ruling is needed because they are aware of a utility that is charging market rates to attach to a replacement pole.³⁵

Mentioning a single unnamed electric utility from among hundreds across the country to support a declaratory ruling that is not even raised by the Petition for Declaratory Ruling disregards the entire FCC complaint process. Complaint proceedings enable the Commission to render a decision based upon a fulsome record rather than unsupported accusations, and enables a remedy to be tailored to fit the findings of fact. ExteNet’s request is no more appropriate than using an example of a single attacher’s behavior with one utility to paint a broad brush against all attachers. ExteNet’s request should therefore be denied.

³⁵ ExteNet Comments at 17.

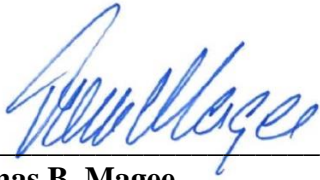
II. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, the *Coalition of Concerned Utilities* urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

COALITION OF CONCERNED UTILITIES

**Arizona Public Service Company
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Eversource Energy
Exelon Corporation
FirstEnergy
Hawaiian Electric Companies
Minnesota Power
NorthWestern Energy
Puget Sound Energy**

By: 
**Thomas B. Magee
Timothy A. Doughty
Keller and Heckman LLP
1001 G Street, NW, Suite 500W
Washington, D.C.
(202) 434-4100**

**Attorneys for the
*Coalition of Concerned Utilities***

November 20, 2019